



## DECISION COVER SHEET

☒ **ACTION BY:** Public Members Only

☐ **ACTION BY:** All Members

**To :** BOARD MEMBERS

**Date:** March 28, 2019

**From :** ADMINISTRATIVE LAW JUDGE: Anthony M. Skrocki

**CASE:** VALLEJO CJD, LLC, a California Limited Liability Company v. FCA US LLC, a Delaware Limited Liability Company  
Protest Nos. PR-2589-18, PR-2590-18, PR-2591-18, and PR-2592-18

FAIRFIELD CJD, LP, a California Limited Partnership v. FCA US LLC, a Delaware Limited Liability Company  
Protest Nos. PR-2593-18, PR-2594-18, PR-2595-18, and PR-2596-18

**TYPE:** Vehicle Code section 3060 Termination

### PROCEDURAL SUMMARY:

- FILED ON CALENDAR: December 18, 2018
- MOTIONS FILED: For each of the Protests, FCA filed a "Motion to Dismiss Protests or, in the Alternative, for a Finding of Good Cause to Terminate Based on Uncontested Evidence"
- COUNSEL FOR PROTESTANTS: Christian J. Scali, Esq.  
Halbert B. Rasmussen, Esq.  
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- COUNSEL FOR RESPONDENT: Michael S. Elvin, Esq.  
Jack O. Snyder, Esq.  
Barack Ferrazzano Kirschbaum & Nagelberg LLP  
  
Robert E. Davies, Esq.  
Mary A. Stewart, Esq.  
Donahue Davies LLP
- **EFFECT OF PROPOSED ORDER:** The Proposed Order grants "Respondent's "Motion to Dismiss Protests or, in the Alternative, for a Finding of Good Cause to Terminate Based on Uncontested Evidence". The Proposed Order finds that the protests are untimely, moot and also that FCA has established good cause to terminate the franchises. The Order would dismiss all of the protests with prejudice.

## **Background Findings**

- Vallejo CJD, LLC, a California Limited Liability Company doing business as Momentum Chrysler Dodge Jeep RAM of Vallejo (“Vallejo Momentum”) filed four protests for termination of its Chrysler, Dodge, Jeep and RAM franchises.
- Fairfield CJD, LP, dba Momentum Chrysler Dodge Jeep Ram of Fairfield (“Fairfield Momentum”) filed four protests for termination of its Chrysler, Dodge, Jeep and RAM franchises.
- Both Vallejo Momentum and Fairfield Momentum are part of the Momentum Auto Group which also operated several other dealerships, all of which are owned by Mr. Rahim Hassanally. Many of Mr. Hassanally’s dealerships were cross-guarantors of, or parties to, the flooring debts of his other dealerships and Mr. Hassanally was a personal guarantor of the flooring debts of all of the dealerships.
- Protestants have conducted no operations at either Vallejo Momentum or Fairfield Momentum since at least November 16, 2018. All seven of the other dealerships of the Momentum Auto Group in Solano County also ceased operations about the same time. (See list in Related Matters below.)
- Vallejo Momentum has not reported the delivery of a new FCA vehicle since November 7, 2018 and has not processed any delivery reporting since November 12, 2018. It has not ordered an FCA vehicle since September 4, 2018.
- Fairfield Momentum has not reported the delivery of a new FCA vehicle since November 12, 2018 and has not processed any delivery reporting since November 14, 2018. It has not ordered an FCA vehicle since September 12, 2018.
- As of at least November 21, 2018, Protestants’ occupational licenses as new motor vehicle dealers for Vallejo Momentum and Fairfield Momentum are designated by the DMV as “Not Valid”.
- Neither Vallejo Momentum or Fairfield Momentum has any facilities from which to operate, neither has any inventory and both of them, along with Momentum Group, are insolvent.
- Momentum is at least \$52 million in debt and its assets are being controlled by a receiver. A court order forbids the sale of vehicles and the transfer of assets. The receiver was appointed by the Superior Court at the request of Momentum and its other related non-FCA dealerships seeking to sell all of the dealerships’ assets “in one global transaction.”

## **Untimeliness**

- It is undisputed that the notices were received at the franchisees’ mailing addresses on December 4, 2018. This began the 10-day time period to file a protest, meaning the period would end on December 14. No protests were filed until December 18, 2018. The protests were not timely so the Board has no power to order a hearing pursuant to Section 3066.

### Mootness

- The ALJ concurred with FCA that the protests were moot. A Board order sustaining the protests would mean only that the franchises (the written agreements) could not be terminated however such an order would be meaningless as the dealerships have been closed since November 2018 and there is no possibility of them reopening.

### Good Cause to Terminate

- The ALJ also found that FCA, through declarations and exhibits, as a matter of law has established good cause to terminate the franchises taking into consideration the existing circumstances and all of the specific factors listed in Section 3061.

### **RELATED MATTERS:**

- Related Board Protests: There were a total of 21 protests filed pertaining to the Momentum terminations involving nine line-makes. The non-FCA protests are as follows:
  - PR-2578-18, PR-2584-18, PR-2585-18 Vallejo Imports, LLC, a California Limited Liability Company v. Kia Motors America, Inc., a California Corporation
  - PR-2579-18 and PR-2580-18 Fairfield Imports, LLC, a California Limited Liability Company v. Toyota Motor Sales, USA, Inc., a California Corporation
  - PR-2581-18 Maverick Auto Group 2, LLC, a California Limited Liability Company v. Volkswagen Group of America, Inc., a New Jersey Corporation
  - PR-2582-18 and PR-2583-18 Fairfield Imports Three, LLC, a California Limited Liability Company v. Hyundai Motor America, a California Corporation
  - PR-2586-18 Fairfield Imports Three, LLC, a California Limited Liability Company v. Mitsubishi Motors North America, Inc., a California Corporation
  - PR-2587-19 and PR-2588-18 Fairfield Imports Two, LLC, a California Limited Liability Company v. Nissan North America, Inc., a California Corporation (Nissan)
  - PR-2597-18 and PR-2598-18 Fairfield Imports Two, LLC, a California Limited Liability Company v. Nissan North America, Inc., a California Corporation (Infiniti)

Motions to dismiss are pending for all but the Toyota protests.

- Related Case Law: *Duarte & Witting, Inc. v. New Motor Vehicle Bd.* (2002) 104 Cal.App.4<sup>th</sup> 626, 637  
*Sonoma Subaru, Inc. v. New Motor Vehicle Bd.* (1987) 189 Cal.App.3d 13, 21
- Applicable Statutes and Regulations: Vehicle Code sections 331, 331.1, 331.1, 3050, 3060 and 3061  
California Uniform Commercial Code sections 1201(b)(23) and 1202(e)  
U.S. Code Annotated section 101(32)